

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Belt Railway Company of Chicago

1. That as a result of an investigation held on Wednesday, June 13, 1979, Carman D. Vasquez was dismissed from the service of the Belt Railway Company of Chicago effective June 19, 1979.

Said dismissal of Carman Vasquez is arbitrary, capricious, unfair, unjust, unreasonable and an abuse of managerial discretion as well as being in violation of Rule 20 and 28 of the current working Agreement.

2. That The Belt Railway Company of Chicago be ordered to reinstate Carman D. Vasquez to their services with seniority, vacation, and all other rights unimpaired and to compensate him for all time lost commencing June 19, 1979 and continuing until such reinstatement is in effect.
3. That The Belt Railway Company of Chicago be ordered to pay all premiums for the dental, hospital, and medical insurance and the group life insurance for all time Carman Vasquez is out of service. In addition to the money amounts claimed herein, the Belt Railway Company of Chicago shall pay Carman Vasquez an additional amount of 6% per annum, compounded annually on the anniversary date of claim.

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At approximately 7 PM on May 10, 1979, Claimant, a Carman on the Repair Track at Carrier's Clearing Yard, Chicago, Illinois, telephoned Car Foreman M. Kincade and informed him that he "... was sick and would be off until further notice". Foreman Kincade apparently acknowledged Claimant's message and he (Kincade) recorded same in the office ledger book.

Because Carrier had not received any further word from Claimant, J. D. Mowery, Superintendent, Car Department, in letter dated May 25, 1979, notified

Claimant that he "... must contact this office ... on matters concerning your absenteeism by May 29, 1979 or proper disciplinary action will be taken". Said letter was sent by registered mail to Claimant's last known home address of record, but was subsequently returned to Carrier after two unsuccessful attempts at delivery.

On June 1, 1979, Mr. Mowery sent Claimant and Organization Local Chairman a Notice of Investigation indicating that Claimant was to report for an investigation hearing on June 13, 1979, "... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your continued absenteeism and failure to contact your supervisors for proper authority in furnishing any information concerning your absenteeism as stated in registered letter sent to your home on May 25, 1979". Once again this second letter was also sent by registered letter to Claimant's last known home address, but once again it was returned to Carrier after two unsuccessful delivery attempts.

The investigation was held as scheduled, however, Claimant did not attend nor was a request for postponement made either by Claimant or by Organization. Pursuant to said investigation Claimant was adjudged guilty as charged and was dismissed from Carrier's service effective June 19, 1979. Said dismissal is now the basis for the instant claim.

Organization's basic position in this dispute is that Claimant was granted permission by Foreman Kincade to be "... off sick until further notice", and that any discipline which might have been assessed as a result thereof is improper. In addition to the foregoing, Organization further argues that Carrier has committed the following procedural violations in the handling of this matter: (1) Carrier's Statement of Charges does not contain a "precise" charge as required in Rule 20; (2) Carrier has failed to present any proof that said "notice" was even sent or delivered to Claimant's home address; (3) since Claimant never received the Notice of Investigation "... he was not apprised of the precise charge nor was he given opportunity to secure witnesses as required by Rule 20; (4) said hearing was held in absentia; (5) the Hearing Officer read Rules A and H into the transcript over the objection of the Local Chairman and said rules are irrelevant in these proceedings; and (6) Carrier's Exhibits 5, 6 and 13 were not presented when the matter was first discussed on the property and may not now be offered as a part of Carrier's Submission for the first time.

In opposition to Organization's basic contention, Carrier argues that sufficient evidence has been adduced to determine "... that Claimant abandoned his job on the pretense of illness ... and his responsibility to protect his employment by not complying with Carrier's instructions to furnish information as to the necessity for his continued absence from work". As support for the aforesaid, Carrier maintains that there is no evidence whatsoever in the record to support Organization's contention that Claimant requested or had been granted a formal leave of absence by Carrier. Thus Carrier argues that: (1) leave of absence is not applicable in the instant case, or any case involving an employee who is off work due to illness; (2) there is no evidence of record to support the allegation that Claimant was/is ill; and (3) Claimant's informal request to Foreman Kincade was not the proper procedure by which to request a leave of absence as is contemplated in Rule 28 or as practiced by Carrier.

Regarding Organization's procedural arguments, Carrier asserts: (1) the Notice of Investigation was sufficiently precise so as to leave no doubt as to the charge which was being raised against Claimant; and (2) said Notice as well as the conducting of the hearing in absentia were proper since "... Claimant chose not to accept, or pick up the Notice, or to attend the hearing, or to advise either the Organization or the Carrier in advance of the scheduled hearing date", and to do so was at his own peril (Third Division Awards 13557, 15007, 17691, 18258 and 21696).

As its last major argument of significance Carrier charges that Claimant's absenteeism record is chronic, and that this fact coupled with those which have been advanced hereinabove are sufficient to justify Claimant's discharge, and Carrier's action herein "... should not be upset unless it can be shown to have been arbitrary, capricious, etc.".

The Board, upon a careful and complete analysis of the record which has been presented in this dispute, can find no good reason either procedurally or merit-wise which would justify a rescission or modification of the penalty which has been assessed by Carrier.

In view of Claimant's widespread deficiencies, Organization's procedural arguments fall considerably short in convincing the Board that Claimant's due process rights were violated or that Claimant was otherwise prejudiced by Carrier's handling of this matter. Claimant's Investigation Notice was sufficiently precise so that there was no doubt as to the reason for the hearing. Despite Organization's contention that Carrier failed to present "any proof that the 'Notice of Investigation' was even sent or delivered to Claimant's home address, the record clearly establishes otherwise. Carrier's inclusion of Exhibits 5, 6 and 13 in its Submission merely served to corroborate testimony and/or evidence which had already been presented at the investigation. And lastly, the Hearing Officer's conducting of the hearing without the Claimant being present does not, in and of itself, nullify the validity of said proceeding particularly when Carrier had satisfied all contractual obligations in endeavoring to provide Claimant and Organization with notice of same.

Having determined the above, our focus now turns to a review of the merits portion of this dispute; and, in this regard, Organization's basic contention is that Claimant was granted a leave of absence until further notice by Foreman Kincade. While the Board can certainly envision any number of ways in which Foreman Kincade would have articulated the true intent of his acknowledgement to Claimant's request on the evening of May 10, 1979, in a more precise and definitive a manner, the fact remains that Carrier's action herein was not predicated upon Claimant's improper request for a leave of absence, but rather because Claimant had continued to absent himself from his duties without furnishing any information whatsoever to Carrier when requested to do so in order to support the continuation thereof. Carrier's request, most assuredly, was neither unreasonable nor improper and Claimant should have forwarded same to Carrier even without having been requested to do so. Under these circumstances, and coupled with Claimant's considerably less than stellar attendance record up to that point, Carrier's decision to terminate Claimant was neither arbitrary, capricious, unjust nor an abuse of managerial authority, and such action, therefore, will remain undisturbed.

Form 1
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Award No. 9052
Docket No. 8693
2-BRCofC-CM-'82

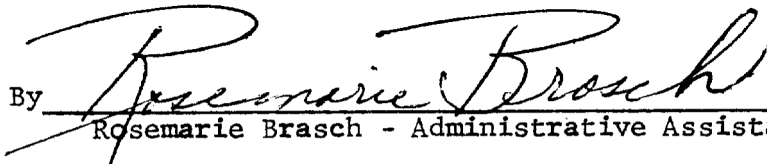
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.